



MIAMI BEACH

City of Miami Beach, 1700 Convention Center Drive, Miami Beach, Florida 33139, www.miamibeachfl.gov

COMMITTEE MEMORANDUM

TO: Members of the Finance and Citywide Projects Committee

FROM: Jorge M. Gonzalez, City Manager

DATE: August 17, 2006

SUBJECT: **DISCUSSION REGARDING PROPOSED PROCESS FOR RECEIVING PROPOSALS FOR THE FUTURE USE AND OPERATION OF THE JACKIE GLEASON THEATER OF THE PERFORMING ARTS.**

As you know, the City Commission, at its meeting on July 27, 2005, referred a discussion on a proposed development agreement and long term lease between the City and Cirque du Soleil (CDS) to operate the Jackie Gleason Theater as a permanent venue for a CDS show, to the Finance and Citywide Projects Committee. Negotiations with CDS commenced shortly after the September 1, 2005 Finance and Citywide Projects Committee Meeting, and have been ongoing for the past year. Most of the key agreement points have been determined and a Development Agreement and Lease are almost completed and ready for Commission consideration.

At the July 12, 2006, City Commission meeting, the City Commission directed the Administration to solicit proposals from AEG Live and Live Nation as possible alternatives for the future use and operation of the Jackie Gleason Theater. This memorandum, and the item before the Committee today, is a follow-up to the City Commission directive, at its July 12, 2006 meeting, for the Administration to solicit proposals from AEG Live and Live Nation to operate the Jackie Gleason Theater.

Pursuant to the Commission request, I asked staff on July 13th to develop a basic evaluation process for the additional two proposals. Its purpose is to identify the specific entities the City would be contracting with; the proposed contractual relationships; the proposed form of agreement (i.e., long term lease, joint venture, management agreement, etc.); the income to the City, the expected contributions from the City (if any); the specific type(s) of live entertainment proposed; proposed capital improvements; pertinent and salient disclosures; and other related information. The process also identifies a timeline within which proposals from AEG Live and Live Nation would be submitted, and also limits communications to the principals of the aforestated entities and the City Manager, City Attorney, and pertinent staff.

It should further be noted that if the respective proposers decide to request an economic development exemption from public records disclosure, pursuant to Section 288.075, Florida Statutes, then disclosure of documents pertinent to the parties/ proposals may also be restricted (by virtue of the statutory exemption). To date, both CDS and Live Nation have requested this exemption be invoked. AEG Live has inquired about and proposed a confidentiality agreement between the City and AEG which the City cannot enter into. They have been made fully aware of the option available to them.

Since July 12th, staff and I have had several conversations with Cirque du Soleil, AEG Live and Live Nation, regarding the direction from the Commission. The three companies are aware of the City's desire to have completed proposals by the end of August, and all believe they are able to meet this deadline. However, all three proposers have raised questions regarding a process, and are seeking guidance from the City as to how their individual proposals will be evaluated and considered.

The Commission's sentiment essentially sought to create parallel tracks, allowing the continued discussions with CDS and, at the same time, the exploration of viable alternatives. Further, the intent was not to adversely delay the ongoing process with CDS, but to allow AEG Live and Live Nation an opportunity to expeditiously provide the City with proposals for the City's consideration. As you are aware, staff and I have already had several negotiating sessions with Cirque du Soleil. Since the July 12, 2006 Commission meeting staff and I have also met with Live Nation on more than one occasion and have received preliminary proposal parameters to be worked through. At this point, we have also met with the local representative for AEG Live and have responded to several public document requests by AEG Live.

In order to accomplish the Commission's directives in a fair, appropriate and expeditious manner I am recommending that the opportunity being afforded to AEG Live and Live Nation be guided by the following parameters:

1. A mandatory Initial proposal and Term Sheet elements no later than August 25, 2006. This proposal would include the specific entities the City would be contracting with; the proposed contractual relationships; the proposed form of agreement (i.e., long term lease, joint venture, management agreement, etc.); the income to the City, the expected contributions from the City (if any); the specific type(s) of live entertainment proposed; proposed capital improvements; pertinent and salient disclosures; and other related information.
2. Scheduled discussion/negotiation session(s) with staff and appropriate company representatives. Including all necessary financial disclosure the City would require as part of our conducting due diligence.
3. Completed "Best and Final" proposals submitted to the City by September 15, 2006.
4. The City will require a Proposal Guaranty to be submitted with the final Term Sheet proposal, in the form of an Unconditional Letter of Credit, in the amount of one hundred thousand dollars (\$100,000). The City will return said Unconditional Letter of Credit to the unsuccessful proposer(s) within five (5) days after the decision by the Mayor and City Commission. The successful proposer's, (if any) Unconditional Letter of Credit will be returned upon completion of negotiations and contract execution.
5. The City Commission impose a modified "Cone of Silence" which would have proposers acknowledge and agree that any communications, whether verbal or written, between the respective proposer(s) and the City, from the date of issuance of these Guidelines, until such time as the City Manager has made his written recommendation to the City Commission, or, in the alternative, a designated City Commission Committee, shall be limited to communications with the City Manager, City Attorney, and their designated staff.

I have attached the proposed Guidelines for your review and discussion. If the process is acceptable to the Committee, I will communicate the Guidelines to the potential proposers as soon as possible. Assuming that the schedule will remain as outlined, my intention is to follow-up with this Committee, and subsequently the City Commission, later in September, with my findings and recommendations on each proposal. I would like to have the staff process concluded in time for the City Commission to consider an agreement with CDS, AEG Live, or Live Nation within the next 60-90 days.

JMG/TH
Attachment

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Jackie Gleason Theater (TOPA) – Guidelines for Submittal of Proposals From AEG Live and Live Nation

Proposals submitted by AEG Live and Live Nation (also referred to herein individually as the “proposer”, or collectively as the “proposers”) shall be sent to the City Manager.

Initial Term Sheet proposals are due to the City Manager by 5:00 PM on Friday, August 25, 2006.

It is anticipated that subsequent meetings will occur between designated City staff and the representative representatives of AEG Live and Live Nation to discuss the contents of the initial Term Sheet proposals. These meetings are intended to be negotiating sessions that will lead up to a final Term Sheet proposal to the City.

Final Term Sheet proposals are due to the City Manager by 5:00 PM on Friday, September 15, 2006.

The City acknowledges that AEG Live or Live Nation may make written request for exemption of certain submitted documents from Florida Public Records Law, including without limitation, records which contain or would provide information concerning plans, intentions, or interests of a private corporation, partnership, or person to locate, relocate, or expand any of its business activities in Florida, as provided in Section 288.075 (2), Florida Statutes.

Notwithstanding the preceeding paragraph, it should be clearly understood by AEG Live and Live Nation that any requested exemptions that may be available under Florida Law, shall terminate upon public disclosure of the exempted material (i.e. including, without limitation, discussion and/or consideration of the respective proposals by the City at a duly noticed public meeting). In the event of such disclosure, or of any other permitted disclosures, as provided in F.S. 288.075(2), AEG Live and Live Nation hereby agree and acknowledge that the City shall have no liability with regard to same.

General Guidelines

The following is generally considered essential information in order to evaluate the economic and business terms being offered to the City and should be incorporated in the initial Term Sheet submitted and/or should be considered when developing the initial Term Sheet.

- Parties – the Term Sheet should identify who is making the proposal, including whether or not this is a joint-venture offer, and should also include disclosure of material interests in the ownership and/or operation of the proposer.

- Project – the proposer’s concept and proposed use(s) for the TOPA venue should be clearly identified
- Project Costs and Funding – the costs of the proposed project to the City should be clearly defined. If there are shared costs proposed, then the full cost should be disclosed as well as the proposed breakout between the City and the proposer. Regardless of the funding party, the scope and projected cost of any proposed capital improvements to the TOPA venue should be identified. The expected revenue sources for the project should be identified.
- Compensation to City – the type, form, and amount of compensation to the City, if any, should be clearly identified. Any special terms, exclusions or exemptions or special qualifications should be clearly identified.
- Form of Agreement and Proposed Term – the type of agreement and/or agreements and the proposed term(s), including any proposed renewals, should be identified.
- Rights to Terminate Agreement – any expected rights to terminate the agreement(s) prior to the end of the expected term(s) should be clearly identified. Such rights would include timeframes in the event of breach or termination for convenience.
- Schedule/timeline - the length of time it will take to implement the agreement(s), the projected date of turnover, etc. should be clearly identified.
- Corporate Guaranty – the City will require a corporate guaranty. Any limits and/or exclusions to this requirement should be delineated.
- Social and Community Benefits – Any proposed benefits to the community should be clearly delineated.
- Operations, Maintenance, and Insurance – the proposed responsibilities and who performs these obligations should be delineated.
- Any other material items or issues that the proposer deems critical to the success of the proposed project should be included.
- Proposal Guaranty – the City will require a Proposal Guaranty to be submitted with the final Term Sheet proposal, in the form of an Unconditional Letter of Credit, in the amount of one hundred thousand dollars (\$100,000). The City will return said Unconditional Letter of Credit to the unsuccessful proposer(s) within five (5) days after the decision by the Mayor and City Commission. The successful proposer’s, (if any)

Unconditional Letter of Credit will be returned upon completion of negotiations and contract execution.

- Proposers hereby acknowledge and agree that any communications, whether verbal or written, between the respective proposer(s) and the City, from the date of issuance of these Guidelines, until such time as the City Manager has made his written recommendation to the City Commission, or, in the alternative, a designated City Commission Committee, shall be limited to communications with the City Manager, City Attorney, and their designated staff.
- Notwithstanding these Guidelines, the City reserves the right to consider additional information not specifically identified herein in order to make its determination as to selection of a proposal (if any).

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